

U. S. DEPARTMENT OF LABOR
Employees' Compensation Appeals Board

In the Matter of HEATHER SIEGEL and ENVIRONMENTAL PROTECTION AGENCY,
Chicago, Ill.

*Docket No. 96-961; Submitted on the Record;
Issued June 4, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a) constituted an abuse of discretion.

The Board has duly reviewed the case record in the present appeal and finds that the Office did not abuse its discretion in denying appellant's request for review.

The only decision before the Board in this appeal is the Office's decision dated October 26, 1995 denying appellant's application for review. Since more than one year had elapsed between the date of the Office's most recent merit decision dated October 21, 1994 and the filing of appellant's appeal on January 30, 1996, the Board lacks jurisdiction to review the merits of appellant's claim.¹

To require the Office to reopen a case for merit review under section 8128(a) of the Act,² the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.³ When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.⁴ To be entitled to merit review of an Office decision denying

¹ 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office's final decision being appealed.

² Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.138(b)(1) and (2).

⁴ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁵

By letter dated September 25, 1995, appellant requested reconsideration of the Office's October 21, 1994 decision and argued that, because she was participating in a rehabilitation program at the time of termination of compensation, the termination was invalid. Section 8104(b) of the Act provides, in part, that individuals directed to undergo vocational rehabilitation by the Secretary shall, while undergoing such rehabilitation, receive compensation.⁶ While appellant was apparently participating in a rehabilitation effort, there is nothing in the record to indicate that this was under the auspices of the Department of Labor. Consequently, appellant did not meet the requirements set forth at 20 C.F.R. § 10.138.

The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.⁷ Such was not the case here, and the Board finds that the Office properly denied appellant's application for reconsideration of his claim.

The decision of the Office of Workers' Compensation Programs dated October 26, 1995 is hereby affirmed.

Dated, Washington, D.C.
June 4, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁵ 20 C.F.R. § 10.138(b)(2).

⁶ 5 U.S.C. § 8104(b).

⁷ See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).